**EXPLANATORY MEMORANDUM TO**

**THE FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE (AMENDMENT) REGULATIONS 2016**

**2016 No. 940**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 The instrument amends the Forest Law Enforcement, Governance and Trade Regulations 2012 (S.I. 2012/178) ("the UK FLEGT Regulations"), which implement Council Regulation (EC) No 2173/2005 ("the EU FLEGT Regulation") and Commission Regulation (EC) No 1024/2008. The two EC Regulations set out a licensing scheme for imports of timber originating from countries with which the EU has signed a Voluntary Partnership Agreement ("VPA").

2.2 This instrument will reduce the fee payable for verification of a FLEGT licence by the UK competent authority from £31 to £9.60. The Government thinks it is right to reduce this fee to ensure that it remains consistent with the principle of full cost recovery.

2.3 The instrument will amend the Statutory Review date of the UK FLEGT Regulations from February 2017 to February 2022. The FLEGT licensing regime has to date not become operational, a review by February 2022 will allow for the licencing regime to have commenced and to have been enforced for a number of years.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None.

***Other matters of interest to the House of Commons***

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

## 4. Legislative Context

4.1 This instrument amends the UK FLEGT Regulations, which implement the EU FLEGT Regulation and the associated Commission Regulation. The EU FLEGT Regulation makes it illegal to import timber and timber products from partner countries with which the EU has signed a VPA, without a valid FLEGT licence. This is to avoid illegally harvested timber and timber products entering the EU from these countries.

4.2 The purpose of this amendment is to: 1) change the cost recovery fee which is payable when licences are submitted to the Government. This fee is allowed for by the EU

FLEGT Regulation. 2) Amend the Statutory Review date from February 2017 to February 2022.

4.3 A complementary piece of EU legislation is Council Regulation (EU) No 995/2010, which lays down the obligations of operators who place timber and timber products on the market ("the EU Timber Regulation"). The EU Timber Regulation prohibits the placing of illegally harvested timber or timber products derived from such timber on the EU market. It requires operators placing timber and timber products on the EU market for the first time to exercise due diligence in relation to their sources and suppliers using a risk-based approach. The EU Timber Regulation became applicable across the EU on 3 March 2013, and is enforced in the UK by the Timber and Timber Products (Placing on the Market) Regulations 2013 (S.I. 2013/233).

## 5. Extent and Territorial Application

5.1 The extent of this instrument is all of the United Kingdom.

5.2 This instrument applies to all of the United Kingdom

## 6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

***What is being done and why***

7.1 The EU Forest Law Enforcement Governance and Trade (FLEGT) Regulation aims to tackle illegal logging by ensuring that imports of timber and timber products entering the EU come from legal sources. It establishes bilateral Voluntary Partnership Agreements (VPAs) between the EU and timber producing countries. VPAs seek to improve regulation and governance in the forest sector and once agreed, will allow timber producing countries to issue exports with a 'FLEGT licence' to verify the products' legality.

7.2 Member States will be responsible for verifying that a valid FLEGT licence accompanies each shipment of timber and timber products that is imported into the EU from a VPA partner country and falls within the scope of the relevant VPA. The first shipments under the FLEGT licensing scheme are expected to arrive in late 2016 when the VPA between the EU and Indonesia is implemented.

7.3 This instrument will reduce the fee payable to the UK competent authority for verifying FLEGT licences. The case for revisiting the fee is based on the need to ensure that the level of the fee remains consistent with the principle of full cost recovery.

7.4 The current fee was introduced in 2014 but so far no fees have been collected. Delays in implementing the VPAs in timber-exporting countries have meant that the FLEGT licensing scheme is yet to be implemented. In the meantime, the government has reviewed its estimates of the costs of verifying FLEGT licences.

7.5 The Department for Business, Energy and Industrial Strategy's (BEIS) Regulatory Delivery Enforcement (formerly the National Measurement and Regulation Office) is responsible for enforcing the FLEGT Regulations in the UK. Regulatory Delivery Enforcement was chosen because it is the Competent Authority for the EU Timber

Regulation, and therefore has timber-specific expertise whilst also being able to make efficiency savings through synergies between the two Regulations.

7.6 Her Majesty's Revenue and Customs (HMRC) is responsible for the customs clearance of goods falling under the EU FLEGT Regulation, and for conducting documentary checks to ensure that a valid licence is presented which matches the relevant customs declaration prior to release to free circulation. This will be undertaken in line with a risk based approach so as not to hinder legitimate imports.

7.7 Border Force is responsible for carrying out physical examinations on an intelligence-led basis to ensure that the contents of FLEGT shipments correspond to the details of the licence.

7.8 Regulatory Delivery Enforcement, HMRC and Border Force will work together on targeting cases of non-compliance.

7.9 The National Wildlife Crime Unit (NWCU) is the liaison point for any Police activity in relation to FLEGT. They will liaise with other Police units in order to support investigations by other enforcements partners into breaches of the EU FLEGT Regulation away from the border. The Police will not receive payment from the cost recovery.

7.10 The administrative cost to Government of carrying out the processes listed above will be recovered by a fee of £9.60 per licence, payable to BEIS, the Competent Authority, when FLEGT licences are submitted. Licences and payments will be submitted via a website; work is underway to include the website on gov.uk.

7.11 Licences will be processed only once full payment is received.

7.12 Importers will be liable for expenses related to the holding and disposal of imports which are illegal under the UK FLEGT Regulations.

7.13 The Department does not intend to consolidate this instrument with the Forest Law Enforcement, Governance and Trade Regulations 2012 ("the UK FLEGT Regulations"), Should any further changes to the fee be necessary we would consider consolidating the legislation.

## 8. Consultation outcome

8.1 The consultation on the UK FLEGT Regulations, which ran from September to December 2009, sought stakeholder views on four main elements regarding implementation of the FLEGT scheme: establishment of a delayed full cost recovery approach to licences from year three onwards of licencing, when we expected increasing flows of FLEGT timber to the UK based upon further VPAs having been signed; enforcement and penalties; the inspections and verifications regime; and dealing with seized timber.

8.2 The Department for Environment, Food and Rural Affairs received seven responses (three NGOs, one Trade Federation, two UK government bodies and one consultant). Responses broadly supported our approach with regard to penalties and charging, including agreement to the proposed approach to delayed full cost recovery. As such, a further consultation has not been carried out for this amendment.

8.3 The Department for Environment, Food and Rural Affairs will inform the relevant major timber trade associations of the change in fee.

## 9. Guidance

9.1 Regulatory Delivery Enforcement is a source of information and guidance for those affected by the EU FLEGT Regulation www.gov.uk/guidance/flegt.

## 10. Impact

10.1 The cost recovery fee has been calculated to cover the full cost to Regulatory Delivery Enforcement, Border Force, and HMRC of the FLEGT implementation regime. The impact on business, charities or voluntary bodies is minimal; the fee represents less than 0.1% of the average shipment value. Further costs may include prosecutions associated with failure to present a valid FLEGT licence.

10.2 There is no impact on the public sector.

10.3 The impact assessment conducted for the UK FLEGT Regulations in 2009 included the full cost recovery model and was validated by the Regulatory Policy Committee (RPC). An Impact Assessment has not been prepared for this instrument as the information contained in the existing Impact Assessment is still current.

## 11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 There are no exemptions for small firms from implementing the EU FLEGT Regulation. It would not be possible to introduce an exemption, as the EU legislation does not allow it.

## 12. Monitoring & review

12.1 The cost recovery fee has been calculated to cover the full cost of implementing the FLEGT regime. The fee will be kept under review as the number of VPA countries issuing FLEGT licences increases.

12.2 The UK FLEGT Regulations must be reviewed by the Department for Environment, Food and Rural Affairs within a period of five years beginning with 20th February 2012.

12.3 To date, the FLEGT licensing regime has not become operational. In order to ensure an effective, robust review of the Regulation, the date has been amended to 20th February 2022. A period of up to five years will allow for the licencing regime to have commenced and to have been enforced for a number of years.

12.4 The European Commission announced in August 2016 that mid November 2016 is the earliest date that the first partner country, Indonesia, could begin to issue FLEGT licences. The EU-Indonesia Joint Implementation Committee will announce in September 2016 the date for FLEGT licensing to begin.

## 13. Contact

13.1 Grace Davis at the Department for Environment, Food and Rural Affairs. Telephone: 0208 026 3192 or email: grace.davis@defra.gsi.gov.uk can answer any queries regarding the instrument.